

KAREN G. ANDRES
ARBITRATOR
LOS ANGELES CITY EMPLOYEE RELATIONS COMMISSION

In the Matter of Arbitration

between

ENGINEERS & ARCHITECTS
ASSOCIATION
Union

and

DEPARTMENT OF RECREATION AND
PARKS
Employer

(Grievance of Ikeba McDaniel)
Arbitration)
LACERB Case No. 2185

ARBITRATOR'S
OPINION &
AWARD

APPEARANCES

For the Union:

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INTRODUCTION

The arbitration arose between the Los Angeles City
Department of Recreation and Parks (Department) and the
Engineers and Architects Association (Association/Union).

Ms. Ikeba McDaniel (McDaniel/Grievant) is a Systems Analyst with the Department. She has held this job since May 1999. On August 7, 2001, the Department served the Grievant with a Notice to Correct Deficiencies (Notice, JX-2) for allegedly failing to notify her supervisor when taking time off from work.

Ms. McDaniel exercised her right to respond and to grieve the Notice. When the Department denied the grievance, she appealed. I was selected by the parties to serve as the neutral arbitrator of this dispute. The matter was heard on April 11, 2002 at the Los Angeles City Employee Relations Board offices at the 200 North Main Street, Suite 1100, Los Angeles, California. An official record was made of the proceedings by Kennedy Court Reporters, Inc. Each party delivered oral arguments, and the matter was submitted pending receipt of the transcript.

II. ISSUE

The general issue defined by the parties is as follows:

Did the Department act appropriately in issuing the Notice to the Grievant? If not, what is the remedy?

III. RELEVANT PROVISIONS OF THE MEMORANDUM OF UNDERSTANDING AND DEPARTMENT STANDARDS OF EMPLOYEE CONDUCT

The following section Memorandum of Understanding (MOU) is relevant to the disposition of this matter:

ARTICLE 1.10 CITY-ASSOCIATION RELATIONSHIP

B. Mutual Pledge of Accord

Inherent in the relationship between the City and its employees is the obligation of the City to deal justly and fairly with its employees and of the employees to cooperate with their fellow employees and the City in the performance of their public service obligation.

The following section of the Department Standards of Employee Conduct (Standards) is relevant to the disposition of this matter:

II.3.b. Failure to notify supervisor of inability to report to work.

V. FINDINGS OF FACT

After considering the testimony at hearing and recorded in the transcripts, the exhibits, and the arguments of the Union and the Department, the following facts are determined to be relevant to the matter:

Ms. McDaniel works in the computer systems administration unit (unit). Built into Ms. McDaniel's regular work schedule was every other Monday off. In July 2001, she was assigned to attend a weeklong training session at New Horizons, 333 North Glenoaks in Burbank. The site was approximately 10-12 miles from the office.

At the time of the training in question, the Grievant did not have ANY job duties. The relationship between her supervisor, Ms. Oyie Esguerra (Esguerra) was very poor. Ms. McDaniel attempted to draw the attention of the Personnel Department in a series of e-mails to the relationship and to her lack of assignment. (AX-A). The Department was slow to respond, but Ms. McDaniel has since been assigned to a project.

The training was scheduled to begin on July 16, a regular day off. Accordingly, the Grievant was given Monday, July 23 off instead.

Ms. McDaniel traveled from her home in Long Beach to the training site. The trip took approximately one hour and 15 minutes. When she arrived at the training site, she discovered that the class was cancelled and moved to the following week. She attempted to call her supervisor, Ms. Oyie Esguerra (Esguerra) to inform her that she would take off the 16th instead of the 23rd.

The Grievant's time sheets for the weeks ending July 21 and 27, 2001 (JX-7) reflect that she took off July 16 and worked July 23. She did not put in for any time worked for the travel to and from the training site on July 16.

The Grievant was unable to reach Ms. Esguerra or the other supervisor by phone. She did not leave a voice mail message for Ms. Esguerra because she had been reprimanded for doing do in

the past. She was told that she needed to speak to a live person.

Ms. McDaniel spoke to another employee, Ken Simms (Simms), and he agreed to convey the information to Ms Esguerra that the Grievant was taking off that day, her regular day off. He typically took messages from employees who determined on a given day that they would not be coming in because he arrived at work earlier than anyone else. Generally Ms. Esguerra, who arrived later, would ask him if anyone called in.

The Grievant also asked Mr. Simms to ask Ms. Esguerra to call her at home. She spent the rest of the day at home and returned to work the following day at her regular time of 7:00 a.m.

Mr. Simms failed to convey Ms. McDaniel's the message Ms. Esguerra to call Ms. McDaniel. He overheard another employee tell the supervisor that the class was cancelled. He assumed that because it was Ms. McDaniel's regular day off that Ms. Esguerra would know that the Grievant would be in the next day.

Ms. McDaniel entered Ms. Esguerra's office shortly after 9:00 a.m., the supervisor's arrival time. Ms. Esguerra berated her and did not allow her to explain the situation of the previous day. The Grievant did not inform Ms. Esguerra that she had left a message with Mr. Simms. She did not feel that her

supervisor would listen to her and had already decided to issue the Notice.

The Notice cited Standards section II.3 and read, "You failed to notify your supervisor that the training class had been cancelled and failed to return to work. The violation occurred on Monday July 16, 2001. You were scheduled to attend training...from July 16-20, 2001, 7:30 a.m. - 3:30 p.m.... You did not inform me that the class was cancelled. Since the class was cancelled, you were expected to return back to work...Any future similar occurrences will be met with stronger disciplinary action, which may include your suspension or discharge." (JX-3).

The policy of the Grievant's unit is that employees usually request non-emergency time off through a project leader or supervisor more than two weeks in advance. Non-emergency time off is generally vacation, jury duty, change of schedule and training.

Emergencies are beyond the control of the employee. In the event of an emergency, employees are instructed to communicate the problem to the supervisor through telephone voice mail, e-mail or face-to-face. When Ms. Esguerra receives such a message, she is not in the habit of telephoning the employee at home.

The Grievant was aware of the time off policy from staff meetings and from a personal encounter. Ms. McDaniel scheduled

approved vacation to begin September 13, 2000. Her regular Monday off fell on September 11. She telephoned the office that evening and left a message that she was going to begin her vacation on September 12. When she returned to work after the vacation, her supervisor told her that her action had been inappropriate. She was required to make the request in advance to allow the supervisor or project leader to evaluate the workload and staff availability.

In the opinion of Harold Fujita (Fujita), Department Personnel Director, regarding the July 16 occurrence, the Grievant's offense was her failure to contact her supervisor directly to receive approval for the schedule change. She should not have assumed that she could revert to her previously established schedule.

VI. OPINION

Having carefully reviewed and weighed the testimony and evidence presented at the hearing, and after considering each argument raised by the parties in their briefs, I reach the following conclusions:

The basis for the grievance was the Notice that stated, "You failed to notify your supervisor that the training class had been cancelled and failed to return to work." (JX-2).

The situation that the Grievant found herself in on July 16, 2001 did not parallel any previous experience. She knew

that it was acceptable to her supervisor to take off in an emergency situation and communicate with the supervisor via voice mail, e-mail or face-to-face. She knew that she was required to obtain permission for a vacation or other anticipated period off by submitting a request at least two weeks in advance. She learned from the incident of September 2000 that it was not acceptable to Ms. Esguerra for her to take off a "bridge" day between a regular day off and a scheduled vacation without first obtaining permission.

Ms. McDaniel's schedule allowed for two Mondays off a month. With permission, she exchanged her regular day off, July 16, for July 23 so that she could attend the training.

When she discovered that the training was changed to the following Monday, the Grievant had already spent a portion of the day in a work-related activity, traveling to the training site. She knew that she would spend the following Monday in a work-related activity. When the training was cancelled, the Grievant attempted to reach her supervisor to obtain permission to stay home on the previously regularly scheduled day. There was no evidence presented that she attempted to receive payment for the travel time spent on July 16.

It was the position of the Department that the reason that employees were required to make vacation or other time off requests well in advance was to allow the supervisor or project

leader to evaluate the workload and staff availability. On July 16, Ms. Esguerra did not expect the Grievant to be at work. Ms. McDaniel was not even assigned to a project. There was no issue of workload or staff availability.

When she could not reach her supervisor, the Grievant made the decision to revert to her previously established schedule. She made the decision to take off her original day off since she knew she would be working on the subsequent Monday.

There was no testimony on the question of whether there would have been a problem to be paid if she worked both days. It would be reasonable for an employee, particularly an employee such as Ms. McDaniel, with a poor relationship with her supervisor, that there might be a problem in reimbursement for working on the two Mondays.

Ms. McDaniel had experienced difficulty in conforming to her supervisor's expectations in the past. It is conceivable that if she attempted to work on both July 16 and 23, she could have been in trouble. The decision to revert back to the original schedule was reasonable. The discipline is not sustained.

REMEDY

The Grievant prayer for relief at arbitration was that she be paid overtime for the time spent on July 16 and that the Notice be removed from her file.

First, I do not see any mention in the grievance of the issue of overtime. Second, the matter that brought the matter to arbitration was the issuance of the Notice. Therefore, I reject the Grievant's request for overtime.

The Department asked that, if I found in favor of the Grievant, the Notice should be sealed. It stated that this is the practice of the Department.

There was considerable confusion in the Department about the way to treat a previously sealed document. Unless the MOU or City or Department rules dictate otherwise, I find that the Department shall remove the Notice from Ms. McDaniel's personnel file.

I recommend that the Department examine supervisor-subordinate relationships in the Grievant's unit.

DATED: May 13, 2002

KAREN G. ANDRES, ARBITRATOR